

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

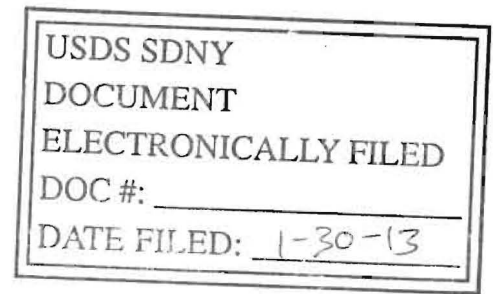
KEVIN JOHNSON, *et al.*,

Plaintiffs,

-v-

7C'S MAINTENANCE CO., INC.,

Defendants.



No. 12 Civ. 1621 (RJS) (SN)

ORDER

RICHARD J. SULLIVAN, District Judge:

Plaintiffs Kevin Johnson and Arturo Vivanco bring this action for violations of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et seq.*, and New York State Labor Law ("NYLL"). On November 15, 2012, the parties held a settlement conference before the Honorable Sarah Netburn, Magistrate Judge, at which they reached an agreement to resolve the case. Now before the Court is the Report and Recommendation ("Report") prepared by Judge Netburn, recommending that the Court approve the settlement agreement as a fair and reasonable resolution of this case.

Plaintiffs initiated this action on March 6, 2012, alleging that their employer, 7C's Maintenance Co., failed to pay them minimum wages and overtime wages as required by the FLSA and NYLL, as well as the "spread of hours" premium mandated under NYLL. The matter was referred to the Honorable Henry B. Pitman, Magistrate Judge, for settlement negotiations on October 11, 2012; on October 12, settlement negotiations were re-assigned to Judge Netburn. Judge Netburn convened a settlement conference with the parties on November 15, 2012, and she issued her Report on January 8, 2013.

A court may accept, reject, or modify, in whole or in part, the findings or recommendations made by a magistrate judge. Fed. R. Civ. P. 72(b); *Grassia v. Scully*, 892 F.2d 16, 19 (2d Cir. 1989). A court may accept those portions of a magistrate's report to which no specific, written objection is made, as long as the factual and legal bases supporting the findings are not clearly erroneous. See *Greene v. WCI Holdings Corp.*, 956 F. Supp. 509, 513 (S.D.N.Y. 1997) (citing Fed. R. Civ. P. 72(b) and *Thomas v. Arn*, 474 U.S. 140, 149 (1985)). To the extent that a party makes specific objections to a magistrate's findings, the court must undertake *de novo* review of such objections. See 28 U.S.C. § 636(b)(1); *United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997).

In a case involving claims brought under the FLSA, a court must ensure that any settlement reached by the parties is fair and reasonable. A court may accept a proposed settlement if it reflects "a reasonable compromise over contested issues." *Lynn's Food Stores, Inc. v. United States*, 679 F.2d 1350,1354 (11th Cir. 1982). "Courts approve FLSA settlements when they are reached as a result of contested litigation to resolve *bona fide* disputes." *McMahon v. Olivier Cheng Catering & Events, LLC*, No. 08 Civ. 8713 (PGG), 2010 WL 2399328, at *6 (S.D.N.Y. Mar. 3, 2010) (citing *Lynn's Food*, 679 F.2d at 1353 n.8).

The Court has reviewed Judge Netburn's Report and finds that it is free of clear errors. According to the Report, the parties' negotiations were arms length, although Plaintiffs appeared *pro se* while Defendants were represented by counsel. The settlement allows the parties to avoid litigation risks related to contested issues, such as whether Defendant was in fact the "employer" for purposes of the FLSA and NYLL and the number of hours Plaintiffs each worked. To achieve settlement, Plaintiffs also agreed to withdraw a bar complaint against their prior counsel, in exchange for which their prior counsel agreed to waive its fees.

Accordingly, the Court hereby adopts Judge Netburn's Report and Recommendation and approves the parties' settlement. IT IS FURTHER ORDERED THAT Plaintiffs should submit proof that they have withdrawn their bar complaint to the Court by February 13, 2013. Finally, to ensure that Defendants fulfill their payment obligations, the Court shall retain jurisdiction over the case for purposes of overseeing the settlement. The Clerk of the Court is respectfully directed to close this case.

SO ORDERED.

Dated: January 28, 2013
New York, New York



RICHARD J. SULLIVAN
UNITED STATES DISTRICT JUDGE

A copy of this order has been sent to:

Kevin Johnson
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Arturo Vivanco
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